IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

CRIMINAL APPLICATION NO. 270 OF 2007

The State of Maharashtra. ... Applicant.

V/s.

Kamlakar Tukaram Gharat
and others. ... Respondents.

Ms.M.M.Deshmukh, APP for the applicant-.

R.D.Suryawanshi for respondents.

CORAM: V.C.DAGA, J.

DATED: 17th July 2007.

P.C.:

. Heard learned A.P.P. for the applicant- State and learned counsel for the respondents.

2. This application is filed by the State of Maharashtra through Kinhavali Police Station, Thane (Rural) for cancellation of anticipatory bail granted in favour of the respondents by Second Ad-hoc Additional Sessions Judge, Kalyan, district- Thane vide his order dated 4th September, 2006, passed in Criminal Bail Application Nos.632/2006. The operative part of the order reads as under:

> Police Station Kinhavli is hereby directed to release the applicants No.1) Kamlakar Tukaram Gharat, 2) Krishna Hari Thakare and 3) Narayan

Dattu Nichite on anticipatory bail on furnishing their P.R.Bond of Rs.15,000/- with one surety in the like amount to each in the event of their arrest in Crime No.I-35/06 for offences punishable under section 395 and 397 Indian Penal Code, subject to condition that they shall attend Kinhavli Police Station as and when called by Investigating Officer for the purpose of interrogation and investigation. They shall also co-operate the Investigating Officer in the investigation and shall not tamper with the prosecution evidence.

Inform the concerned Police Station, accordingly.

3. The perusal of the aforesaid order would show that bail was granted to the respondents, subject to the condition that the applicants- accused (respondents herein) shall attend Kinhavli Police Station as and when called by the Investigating Officer for the purpose of interrogation and investigation and that they shall co-operate with the Investigating Officer and shall not tamper with the prosecution evidence. The application is divided into two parts, one factual part and another part is grounds giving rise to the present contention. So far as factual part of the application is concerned, there is absolutely no statement in the application rather a whisper that, at any point of time; the respondents-accused were informed by the attend the Investigating Officer or to attend the police station for the purpose of interrogation and investigation. There is no averment in the application that at any point of time the respondents were called and they did not

co-operate or that they tried to tamper with the prosecution evidence. However, statement is to be found in the grounds which is supposed to be a legal contention that the present respondents did not co-operate with the Investigating Officer. The statement made in the application, that too in the grounds of the application cannot be accepted for the simple reason that no material particulars and/or details, whereas to date and time when the respondents were called and that they did not attend, are to be found. The application appears to have been drafted absolutely in a careless manner without disclosure of factual aspect of the matter.

4. In **Bhagirath Singh Judeja v. State of Gujarat**, AIR 1984 SC 372, the Apex Court has observed-

> "Very cogent and overwhelming circumstances are necessary for an order seeking cancellation of the bail. And the trend today is towards granting bail because it is now well-settled by a catena of decisions of this Court that the power to grant bail is not to be exercised as if the punishment before trial is being imposed. The only material considerations in such a situation are whether the accused would be readily available for his trial and whether he is likely to abuse the discretion granted in his favour by tampering with evidence."

In **Gurucharan Singh v. State (Delhi Admn.)**, AIR 1978 SC 179, the Apex Court has observed as follows:

"We may repeat the two paramount considerations, viz. likelihood of the accused fleeing from justice and his tampering with prosecution evidence relate to ensuring a fair trial of the case in a Court of justice. It is essential that due and proper weight should be bestowed on these factors apart from others. There cannot be an inexorable formula in the matter of granting bail. The facts and circumstance of each case will govern the exercise of judicial discretion in granting or cancelling bail."

5. In the circumstances, application is rejected.

JUDGE